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CHAIRMAN ADAM PUTNAM WASHINGTON D.C. 226-2302

March 22, 2007

H.R. 1433 - District of Columbia House Voting Rights Act of 2007

Floor Situation

H.R. 1433 is being considered on the floor pursuant to a closed rule. The rule:

- Provides 80 minutes of debate with 60 minutes equally divided and controlled by the Chairman and Ranking Minority Member of the Committee on the Judiciary, and 20 minutes equally divided and controlled by the Chairman and Ranking Minority Member of the Committee on Oversight and Government reform.
- Waives all points of order against consideration of the bill except for clauses 9 (earmarks) and 10 (PAYGO) of Rule XXI.
- Provides that the amendment printed in the report shall be considered as adopted and the bill, as amended shall be considered as read.
- Waives all points of order against the bill, as amended.
- Provides 1 motion to recommit with or without instructions.

This bill was introduced by Delegate Eleanor Holmes Norton (D-DC) on March 9, 2007. The bill was ordered to be reported from the Committee on Oversight and Government Reform, by a recorded vote of 25-4, on March 13, 2007. Additionally, the bill was ordered to be reported from the Committee on the Judiciary, by a recorded vote of 21-13, on March 15, 2007.

H.R. 1433 is expected to be considered on the floor on March 22, 2007.

Summary

H.R. 1433 adds 2 permanent voting Members to the House of Representatives, bringing the total number of Members to 437.

The first voting Member will represent the District of Columbia (DC). The bill treats DC in terms of a State when it comes to representation in the House of Representation and not for representation in the Senate. H.R. 1433 provides that only 1 Member may ever

represent DC, even after the next reapportionment. By adding a voting Member to the House of Representatives from DC, the Electoral College will not be affected.

H.R. 1433 repeals the Office of the District of Columbia Delegate when a Member from DC is sworn into the 110th Congress.

The second additional voting Member will come from the state which is next in line to receive another representative to the House of Representatives according to the apportionment formula of the 2000 Census, which is the State of Utah. The additional Member from Utah will be an at-large Member, giving all residents of Utah an additional representative in the House of Representatives. The additional at-large seat granted to Utah will be part of the House of Representatives for the 110th, 111th, and 112th Congresses and will be subject to reapportionment following the 2010 Census. The bill does not allow Utah to redistrict until after the 2010 Census and reapportionment is conducted.

Under the Constitution, H.R. 1433 grants to Utah one additional electoral vote for President of the United States in the 2008 Presidential election.

The bill also contains a nonseverability clause that states if any provision of this Act, or any amendments made by this Act, is declared or held invalid or unenforceable, it renders the entire bill invalid.

Manager's Amendment
The manager's amendment offered by Rep. Conyers and Rep. Waxman:

- Strikes section 2 (findings of Congress);
- Strikes section 4(d) (requiring that the Member from DC and the Member from Utah be sworn in on the same day);
- Offsets spending for Utah's new seat by adjusting estimated tax payments for certain individuals by 0.003%; and
- Strikes section 6 (repealing the Office of Statehood Representative).

Background
House Membership
Article I, section 2 also states that the "House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature."

The House of Representatives is elected based on the population of each State. In the apportionment act of 1941, the House seat limit was set at 435 Members, and a minimum

and maximum size of the House of Representatives is established by Article I, section 2 of the Constitution, which states that the "number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative…"

Historically, when a new State is admitted into the Union, the size of the House has increased, either temporarily or permanently. In 1959 and 1960, Alaska and Hawaii respectively were admitted into the Union and the size of the House was increased to 437. Following the results of the 1960 census, the size of the House was reset at 435 and, due to reapportionment, Alaska received one seat, while Hawaii received 2 seats.

Apportionment Formula

A census is conducted every ten years by the Census Bureau. It is standard practice for the Director of the Bureau to report the results of apportionment to the President by the end of the year in which the census took place. The Clerk of the House will then receive the report and send to the Governor of each state a "certificate of the number of Representatives to which such state is entitled."

To find the "ideal" size of each district, the number of citizens is divided by 435. This number serves as the "trial" divisor. Each state's population is then divided by the ideal district size to determine the number of Representatives the state should receive.

To determine the size of representation by a State, the number is not rounded up or down based on .5. Instead, the geometric mean is taking between the 2 numbers split by the decimal. For example, if the ideal size for a state is 10.3232, the geometric mean of 10 and 11 is taken. Geometric mean is computed by taking the product of the two numbers split by the decimal (10x10) and then finding the square root of the product (10.4881). The final answer (10.4881) is then rounded down because it is below .5 and this state would receive 10 seats in the House.

If the ideal sized district population does not come to equal 435 seats, the trail divisor is adjusted up or down to yield 435 seats. After the 1990 census, the ideal size district was 572,466 but it was adjusted up to produce a 435 Member House.

History of the District of Columbia

Article I, section 8, clause 17 of the United States Constitution grants Congress the power to "exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."

On July 20, 1790, the District of Columbia was established as the federal Capitol of the United States pursuant to the Constitution. The Constitution explicitly did not make DC a

State of the Union. It did allow Congress to exercise its enumerated powers over the matters of DC but recently Congress has yielded some power to DC.

The purpose of creating a federal district was to allow for the district to provide for its own needs and not the pressures of any one state. Also, a neural territory was desired where states could meet in an open forum.

Electoral College and DC

The XXIII Amendment to Constitution of the United States allows DC to receive 3 votes in the Electoral College. Specifically, the Amendment states: "A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment."

Accordingly, by adding a full voting Member to the House of Representatives from DC the Electoral College will not be affected. But with the addition of an additional Member from another state, Utah will receive an additional vote in the Electoral College for the 2008 presidential election.

Voting Rights in the House of Representatives and DC

The District of Columbia is not a State and thus does not have full voting rights in the House of Representatives or the Senate. However, the Delegate from DC does have voting rights in the Committee of the Whole of the House pursuant to the rule changes of H.Res. 78, which passed the House of Representatives, by a recorded vote of 236 to 191 (Roll no. 57) on January 24, 2007 (Legislative Digest for H.Res. 78).

Relevant Court Cases

The concern of providing DC with a vote in the House of Representatives was considered by a 3-judge panel of the United States District Court of the District of Columbia in 2000. The case, *Adams v. Clinton*, examined the issue of whether failing to provide DC with congressional representation violated the Equal Protection Clause of the Constitution. The court determined that the Constitution does not require DC to have voting rights. The Supreme Court upheld this decision.

In 1805, the Supreme Court heard *Hepburn v. Ellzey*, which upheld that Article III, Section 2 excluded citizens of DC as citizens of "different states." The Court did note that DC residents should not be denied access to federal courts and suggested that Congress look into this matter. Almost 145 years later, Congress took up this issue and granted the citizens of DC access to federal courts and the legislation was upheld by the Supreme Court in *National Mutual Insurance Company v. Tidewater Transfer Company*.

Cost

CBO estimates that enacting the bill would increase direct spending by about $200,000 in 2008 and by about $2.5 million over the 2008-2017 period. In addition, implementing the bill would have discretionary costs of about $1 million in 2008 and about $9 million over the 2008-2012 period, assuming the availability of the appropriated funds.

Administration Views

"The Administration strongly opposes passage of H.R. 1433. The bill violates the Constitution's provisions governing the composition and election of the United States Congress. Accordingly, if H.R 1433 were presented to the President, his senior advisers would recommend that he veto the bill." Statement of Administration Policy released on March 20, 2007.

Staff Contact

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